

Persons who purpose to "lease" the use of property, but in fact sell such tangible personal property to nominal "lessees," are considered to be making conditional sales subject to Retailers' Occupation Tax. See 86 Ill. Adm. Code 130.220. (This is a GIL).

March 25, 1999

Dear Xxxxx:

This letter is in response to your letter dated November 10, 1998. The nature of your letter and the information you have provided require that we respond with a General Information Letter, which is designed to provide general information, is not a statement of Department policy and is not binding on the Department. See 86 Ill. Adm. Code 1200.120(b) and (c), enclosed.

In your letter, you have stated and made inquiry as follows:

I spoke with PERSON on October 29, 1998, regarding \$1.00 and \$100.00 buyout leases; he asked that I forward an example to the Legal Department. We would like to establish that our \$1.00 and \$100.00 buyout leases are in fact conditional sales contracts, and not leases insofar as the State of Illinois is concerned. It is our understanding that a true lease has no residual and is considered either an open end or a fair market lease in the State's eyes.

Enclosed is an example showing a \$100.00 buyout lease in which sales tax was paid at lease inception, a copy of the contract showing the \$100.00 buyout, a copy of our bank funding showing the depreciation of the asset to the \$100.00, as well as the amortization schedule. When the lease comes to termination, we are technically selling for \$100.00 and would collect only appropriate sales tax on \$100.00.

We would welcome your comments and/or the opportunity to discuss with you in detail, as we have done numerous of these leases prior to our becoming a retail facility this year.

For general informational purposes we enclose a copy of 86 Ill. Adm. Code 130.2010, the Department's regulation that covers the taxation of leases. Under Illinois law, "true leases" and "leases" that are actually conditional sales contracts are treated differently for Retailers' Occupation and Use Tax purposes. Lessors are subjected to a Use Tax on their cost price or acquisition value of tangible personal property, which they use by leasing in Illinois. This means lessors encounter a front-end tax on value rather than an amortized tax on receipts. The only exception is automobiles rented for one year or less.

True leases generally have no buy out provisions at the close of the leases. If buy out provisions do exist, they must be fair market value buy out options in order to maintain the character of the true leases. Lessors of tangible personal property under true leases in Illinois are deemed end users of the property to be leased. See 86 Ill. Adm. Code 130.220(a). As end users of tangible personal property located in Illinois, lessors incur Use Tax liability on their cost price of such property.

Under Section 130.2010(a), persons who purport to "lease" the use of property, but in fact sell such tangible personal property to nominal "lessees," are considered to be making conditional sales subject to Retailers' Occupation Tax. Such would be the case when the agreements contain nominal purchase options at the end of the lease term. Such transactions are considered conditional sales from the outset, and all the receipts from the transaction would be subject to tax. In these situations Retailers' Occupation Tax is due on all the payments received by the "lessors," and for automobiles the tax on all payments is due at the start of the lease term when the motor vehicle must be titled in Illinois.

Lessors or rentors of motor vehicles are considered to be retailers when they sell automobiles coming off lease. Section 1c of the Retailers' Occupation Tax Act (35 ILCS 120/1c) provides, in part, that "[a] person who is engaged in the business of leasing or renting motor vehicles to others and who, in connection with such business sells any used motor vehicle to a purchaser for his use and not for the purpose of resale, is a retailer engaged in the business of selling tangible personal property at retail." Therefore, when lessors sell an automobile to lessees, the lessors will incur Retailers' Occupation Tax liability on the gross receipts from such sales.

Automobiles leased under terms of one year or less in Illinois are not subject to Use Tax but rather are subject to the Automobile Renting Occupation and Use Tax. (35 ILCS 155/1 et seq.) This tax is imposed at the rate of 5% of the gross receipts from such business, and local auto rental taxes may also apply.

I hope this information is helpful. The Department of Revenue maintains a Web site, which can be accessed at www.revenue.state.il.us. If you have further questions related to the Illinois sales tax laws, please contact the Department's Taxpayer Information Division at (217) 782-3336.

If you are not under audit and you wish to obtain a binding Private Letter Ruling regarding your factual situation, please submit all of the information set out in items 1 through 8 of the enclosed copy of Section 1200.110(b).

Very truly yours,

Martha P. Mote
Associate Counsel

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Enc.